IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17/07/2002

CORAM

The Hon'ble Mr.Justice P.SATHASIVAM.

Writ Petition No.16448 of 1995
and
W.M.P.No.26116 of 1995

V.Krishnaswamy
rep.by V.Gopalakrishnan,
Power of Attorney Holder,
No.1,5th Cross Street,
Karpagam Gardens,
Adyar,Madras-600 020. .. Petitioner

Vs.

1.Chairman,
Taxation Appeals Committee,
Corporation of Madras,
Madras-3.

2.The Revenue Officer,
Zone No.10,Division No.154,
Corporation of Madras,
Near Sanskrit College,
Mylapore, Madras-600 004. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
for the issue of a Writ of Mandamus and as stated therein.

For Petitioner :: Mr.J.Narayamoorthy.

For Respondents :: Mr.B.Bagyalakshmi,

:O R D E R

The petitioner has approached this Court to issue a Writ of Mandamus to direct the first respondent—Chairman, Taxation Appeals Committee,Corporation of Madras, Madras-3, to consider his appeal dated 30-03-1 993 and pass suitable orders on merits.

2. According to the petitioner, he is the owner of flat No.M.52 "C" (MIG) Flats,Lattice Bridge Road, Indira Nagar, Adyar, Madras-20. The Corporation of Madras assessed the property tax at Rs.522-75 on the basis of

annual value rate of Rs.4914 /- as per their letter dated 12-03-1986. In the year 1986 the Corporation issued a notice fixing the property tax at Rs.522.75 and the tax was being paid regularly. Thereafter he left for abroad and let out the premises to one of his relations with effect from 1985 on a monthly rent of Rs.450/- and he vacated the premises on 31-01-1992. While so, the Corporation issued the notice on 7-2-1992 increasing the property tax payable by him to Rs.1304-95 with effect from the first half year 1991-92, even though the premises was under the owner's occupation. Considering the representation of the petitioner, the Corporation of Madras fixed the tax by their order dated 24-12-1992 to Rs.125 3/-, without going into the facts of the case. The said order was received on 21-01-1993 by the caretaker of his house. In the month of January, 1993, he was away from Madras and his house maid received this order. After his return from abroad, he filed an appeal before the Taxation Appeals Committee, Madras, on 30-03-1993 seeking reduction in the tax. The Taxation Appeals Committee rejected the appeal on the ground that

appeal was filed beyond the period of 15 days and there is no provision in the Act to condone the delay in preferring the appeal. Hence, the present writ petition has been filed before this Court.

3. Though notice was served on both the respondents even in the year 1995 and 1996, particularly the second respondent, who is answerable to the claim of the petitioner, has not chosen to file counter affidavit even after seven years.

4. Heard the learned counsel for the petitioner as well as the respondents. Though the petitioner has prayed for issuance of Writ of Mandamus to direct the first respondent to consider the appeal memo dated 30-03-1993, in the light of the order of the Taxation Appeals Committee dated 30-08-1994 and in the interest of both parties, I propose to consider whether the decision arrived at by the authority is correct or not. There is no dispute that the petitioner herein has filed the appeal before the first respondent after the expiry of the prescribed period. According to the Appeals Committee, the appeal filed was not within 15 days from the date on which the order of the Commissioner was received by him. The petitioner has received the order of the Commissioner on 21-01-1993, however he preferred the appeal only on 30-03-1993. No doubt there is a delay in filing the appeal. However, according to the first respondent, in the absence of any provision under the Madras City Municipal Corporation Act, 1919 to condone the delay in filing the appeal, the appeal was rejected as time barred. In this regard, the learned counsel appearing for the petitioner has pressed into service the decision of AR.LAKSHMANAN,J. (as His Lordship then was) reported in SIVABUSHANAM AMMAL Vs. COMMISSIONER, CORPORATION OF MADRAS (1995 TNLJ, 124). In the above decision, identical question was considered by the learned Judge while considering the applicability of Section 5 of the Limitation Act in respect of the provisions before the Taxation Appeals Committee. The following conclusion of the learned Judge is relevant, which reads as under:
"As per Rule 12(2) in Schedule V of the Madras City Municipal Corporation Act, 1919, as substituted by G.O.Ms.1178 dated 10-12-1987, the Taxation Appellate Tribunal, in my opinion, has to be treated as a Court, for the purpose of Section 5 of the Limitation Act, 1963. The Taxation Appeals

committee, apart from having the trappings of judicial Tribunal, has power to give a decision and a definite judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement and as such, in my view, it falls within the meaning of the term 'Court' used in Section 5 of the Limitation Act, 1963. I have therefore, no hesitation in holding that the impugned order of the appellate authority viz., Chief Judge Court of Small Causes is vitiated since it was held that the Taxation Appeals Committee has no power to excuse the delay in filing the appeal and the Taxation Appeals Committee could have seen that sufficient cause is shown by the petitioner for the delay caused in filing the appeal before the Taxation Appeals Committee. Since the impugned order suffers from patent illegality and material irregularity and for the reasons explained above in this order, I set aside both the orders of the Taxation Appeals Committee and the Chief Judge, Court of Small Causes, impugned in this revision.
Since under the Limitation Act, 1963, Section 5 of the Act is specifically made applicable to Section 29(2) of the Act, it can be availed for the purpose of extending the period of limitation prescribed by special or local law, viz., the Madras City Municipal Corporation Act, which is not only special but also a local law. Therefore, I am of the view that the dismissal of the appeal by the Taxation Appeals Committee on the ground that it is out of time is liable to be set aside in the interests of justice."
There is no dispute with reference to the applicability of the above decision to the case on hand.

5. Following the said decision, though the petitioner has prayed for Mandamus, I hereby set aside the order of the Chairman, Taxation Appeals Committee, the first respondent herein, dated 30-08-1994 and remit the appeal S.No.37/TAC:523/93 before the Taxation Appeals Committee for fresh disposal. On receipt of the appeal papers, the Taxation Appeals Committee, Corporation of Madras, Chennai, is directed to dispose of the same after giving notice to

the petitioner. It is open to the parties to make a request for settlement of the matter before the Lok Adalath. The writ petition is ordered accordingly. No costs. Consequently, W.M.P.No.26116 of 1995 is closed.

Index-Yes.
Internet-Yes.

To
1.The Chairman,
Taxation Appeals Committee,
Corporation of Madras,
Madras-3.

2.The Revenue Officer,
Zone No.10,Division No.154,
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Sk/-

P.SATHASIVAM,J.
W.P.No.16448 of 1995